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NCBC DAVISVILLE  
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LETTER REGARDING ENVIRONMENTAL LAND USE RESTRICTION APPLIED TO  
CONSTRUCTION EQUIPMENT DIVISION NCBC DAVISVILLE RI  
5/14/2013  
BRAC PMO OFFICE NORTHEAST



**DEPARTMENT OF THE NAVY**  
BASE REALIGNMENT AND CLOSURE  
PROGRAM MANAGEMENT OFFICE, NORTHEAST  
4911 SOUTH BROAD STREET  
PHILADELPHIA, PA 19112-1303

*B. Wagner*

5090  
Ser BPMOE/13-089  
May 14, 2013

Mr. Richard M. Bianculli, Jr.  
Office of Legal Services  
Rhode Island Department of Environmental Management  
235 Promenade Street  
Providence, RI 02908-5767

Dear Mr. Bianculli:

The Navy is in receipt of your letter of 22 April 2013 regarding the desire of the Department of Environmental Management (DEM) to have an Environmental Land Use Restriction (ELUR) applied to the Construction Equipment Division (CED) parcel at the former Naval Construction Battalion Center (NCBC) Davisville, Rhode Island. The specified basis for this ELUR is the exceedence of contaminant concentrations in soil above various criteria as noted in Rule 8.02 of the RIDEM Remediation Regulations.

The Department of the Navy (Navy) performed individual Risk Assessments (RA) at four sites within the CED parcel. The RAs were performed in accordance with the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and the Federal Facilities Agreement between the Navy, DEM, and the United States Environmental Protection Agency (EPA) dated 23 March 1992. No unacceptable risk was identified at Sites 01, 02, and 03 and as such the Navy has determined that no further action is warranted at those sites. This is consistent with CERCLA, the NCP, and EPA interpretive guidance on the "Role of the Baseline Risk Assessment in Superfund Remedy Selection Decisions" (OSWER Directive 9355.0-30, April 1991), which states that action is generally not warranted when cumulative site risk to an individual is less than 10(-4). It is also wholly consistent with the 12 January 2012 Naval Station Newport Agreement (Attachment1), which acknowledged that CERCLA remedial action is not required where no unacceptable risk is identified at a site.

The OSWER Directive notes that an explanation must be provided if a decision is made to take action at a site where the risk is less than 10<sup>-4</sup>. There are no special circumstances at the CED parcel that would explain or justify taking action at Sites 01, 02, or 03. The CED parcel is currently an industrial area and the intended property recipient has submitted conceptual plans to use the parcel as a paved parking area. The transfer of the CED parcel will be completed through a public benefit conveyance via the United States Department of Transportation Maritime Administration (MARAD). The MARAD deed will contain a reversionary clause requiring that the parcel be used in perpetuity for Port Facility Operations, effectively precluding the use of this property for residential purposes in the future. Given that there is no unacceptable risk at Sites 01, 02 and 03 and no particular circumstances at the site otherwise suggesting the need to take action, the Navy cannot justify - fiscally or otherwise - deviation from the well-established CERCLA approach that DEM itself recently acknowledged.

The Navy agrees with DEM that further action must be considered at Site 04. The specific RA for Site 04 identified a risk under CERCLA due to PCBs which, ironically, are not present at levels that exceed the exposure criteria values promulgated by RIDEM. Nevertheless, consistent with the aforementioned Naval Station Newport Agreement, the Navy will evaluate remedial alternatives to address all constituents - not just PCBs - which exceed RIDEM criteria and are identified as applicable, relevant, and appropriate requirements, with the exception of Total Petroleum Hydrocarbons (TPH). Unless TPH is determined to be comingled with other contaminants that pose a risk pursuant to CERCLA they will be addressed separately under Rhode Island petroleum requirements.

If you have any questions please do not hesitate to contact me at 617-753-4656.

Sincerely,

A handwritten signature in black ink, appearing to read "David Barney", written over a horizontal line.

DAVID BARNEY  
BRAC Environmental Coordinator  
By direction of BRAC PMO

Enclosure:  
Agreement, Naval Station Newport, 12 Jan 2012

Copy to:

E. Balsamo, Navy Counsel

B. Olson, USEPA

S. King, QDC

J. Reiner, Town of North Kingstown

J. Dale, NAVFAC Midlant

L. A. Sinagoga, TtNUS Project Manager

G. Wagner, TtNUS, Admin Record

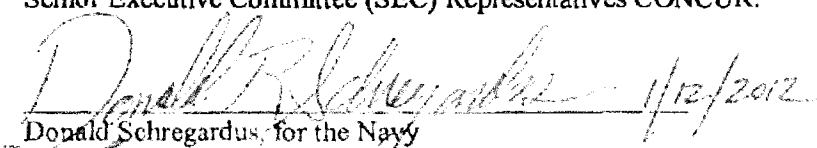
S. Currie, TtNUS Project Files (CTO 418 112G00822)


**Agreement**  
**Naval Station Newport, Rhode Island Dispute**

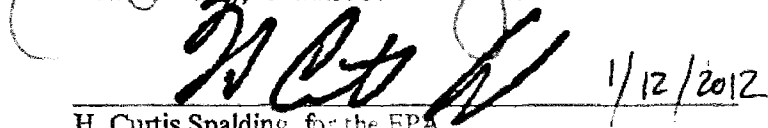
**January 12, 2012**

1. The Navy, as lead agency, has discretion to use more stringent screening criteria developed by the state, in addition to EPA's risk-based screening levels. The State strongly recommends inclusion of all potential chemical-specific ARARs in the screening process if more stringent than EPA's risk-based screening levels.
2. If no unacceptable risk is identified at a site, CERCLA remedial action may not be warranted. If an unacceptable risk is identified at a site, a CERCLA remedial action to address site risks must meet (or waive) ARARs, including chemical-specific ARARs at the site. More stringent state ARARs need to be addressed consistent with CERCLA section 121 (d)(2)(A)(ii), the NCP, the Naval Station Newport Federal Facilities Agreement (FFA), and existing EPA guidance, including OSWER Directive 9234.2-05/FS, *CERCLA Compliance with other Laws Manual; CERCLA Compliance with State Requirements*, December 1989.
3. Consistent with CERCLA and the NCP, remedial actions selected pursuant to section 121 must be protective of human health and the environment. Soil preliminary remediation goals (PRGs) for CERCLA sites at Naval Station Newport shall be developed for the investigation and remediation phases for soils in accordance with established EPA guidance, ARARs, and consideration of background levels. This may result in the development of PRGs for contaminants that were not originally identified as risk drivers.

Senior Executive Committee (SEC) Representatives CONCUR:

  
Donald Schregardus, for the Navy

  
Terrence Gray, for Rhode Island DEM

  
H. Curtis Spalding, for the EPA